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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4759 OF 1993

Subhash Samudaik Sahakari
Shetkari Sangh Ltd. & anr. ... Petitioners

V/s

The Regional Provident Fund
Commissioner & anr. ... Respondents

Mr. J.M. D'Silva for the petitioners.

Mr. M.S. Karnik for the respondent No.1.

Mr. Suresh Kumar for the respondent No.2.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 28TH NOVEMBER, 2006.

P.C.:

1. The petitioners have challenged the orders passed by the Regional Provident Fund Commissioner under Sections 7-A and 7-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") and the recovery notice issued pursuant thereto.

2. The petitioners were issued a notice on 27.4.1991 informing them that their establishment has been covered

under the provisions of the Act. They were, therefore, required to contribute towards the Provident Fund Scheme formulated under the Act. Since the petitioners did not contribute to this scheme as required, a show cause notice was issued by the Commissioner informing them that an enquiry under Section 7-A would be held against them. A summons was issued accordingly under Section 7-A of the Act on 18.10.1991. The petitioners appeared before the authority and pointed out their defences and contentions regarding the applicability of the Act to their establishment. The Commissioner by his order dated 22.4.1993 did not accept the contentions raised by the petitioners and hence the Act and the Scheme were made applicable to the petitioners' establishment. Consequently, a notice seeking to recover the Provident Fund dues and other amounts was issued by the respondent.

3. Being dissatisfied with this finding of the Commissioner, the petitioners preferred a review application under Section 7-B of the Act. This review application was decided on 6.9.1993 by the Commissioner. It was held that Section 7-B had not been notified and, therefore, the review application was rejected.

4. The petitioners have challenged the orders passed

under Sections 7-A and 7-B of the Act. In my opinion, it would be in the fitness of things to remand the matter to the Commissioner to consider the review application filed by the petitioners. The provisions of Section 7-B have come into effect from 1.7.1997

5. The petitioners to appear before the Commissioner who will consider their review application in accordance with the law, on merits alone. Until such time as the review application is decided by the Commissioner, no recovery shall be made from the petitioners. The application under Section 7-B shall be decided within three months from today. Petition disposed of accordingly.

6. The petitioners shall appear before the Regional Provident Fund Commissioner on 18th December, 2006 for the purposes of deciding the application under Section 7-B alone.

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